No.

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

PAUL C. BATES,

Plaintiff in Error,

vs.

OREGON-AMERICAN LUMBER COMPANY,

Defendant in Error.

Plaintiff in Error's Brief

Names and Addresses of Attorneys Upon this Brief:

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STATEMENT OF FACTS.

On, to-wit, July 1, 1917, the Defendant in Error purchased from the DuBois Lumber Company 27,331.31 acres of timber land located in Tillamook, Columbia and Clatsop Counties of the State of Oregon, for the sum of $3,650,000.00. This acreage was heavily timbered and was valuable chiefly for its timber. There were no transportation facilities available for this timber. It was located in a contiguous body and after the Defendant in Error had secured title to this property, the Defendant in Error desired to develop this property and market the timber thereon, and its first desire was to secure transportation facilities.

The Plaintiff in Error was probably more familiar with the contour of the country and the means best calculated to bring about a development of this property than any other known person. The Plaintiff in Error had traveled over this property many times, had spent weeks and months upon it and was intrumental in the sale of said property by the DuBois Lumber Company to the Defendant in Error. This Plaintiff in Error had also known the Eccles people for many years, had known Chas. T. Early for some thirty years. The Eccles people, who were the owners of the Defendant in Error, had been operating sawmills and logging camps in the State of Oregon for over thirty years, and at the time of this purchase were then the owners of and operating some five lumbering and logging plants in the State, all of which were under the immediate

management of Chas. T. Early. In addition to the lumbering operations, the Eccles people also owned and operated two railroads in the State of Oregon, a line out of Mt. Hood, Oregon, and one out of Baker, Oregon. The lumbering and logging operations of the Eccles interests were carried on under the corporate name of The Oregon Lumber Company. The Defendant in Error was organized for the specific purpose of developing the timber land acquired on July 1, 1917.

Immediately after this timber was acquired and taken in the name of the Defendant in Error, the Plaintiff in Error was employed by Chas. T. Early, who was a director, stockholder, incorporator and managing agent of the Oregon-American Lumber Company, as well as of the Oregon Lumber Company.

The Defendant in Error, through its agents and officers, realizing the Plaintiff in Error's knowledge of the country and knowing his connection with other operating concerns near the vicinity of this logging operation, desired his services as a special employee, and during August of 1917, the Plaintiff in Error entered upon the performance of his duties.

This body of timber, located as it was in several counties, without any rail or water transportation, presented to the Defendant in Error the problem of how best to secure an outlet to the market. There were a number of routes which might be utilized. The Wheeler people had a railroad to within a few miles of this tract. The United Railway Company,

operating out of Linnton, Oregon, also had a railroad which might be extended into this property. The Portland and Southwestern Railroad Company, likewise, had a line operating from Scappoose, Oregon, in the direction of this timber. The C. R. McCormick & Co. interests at St. Helens, Oregon, likewise, were the owners of a railroad which might be extended to this property. The Plaintiff in Error was acquainted with these various companies, was interested in a financial way in one of them, and the Defendant in Error being aware of these facts, employed this Plaintiff in Error to negotiate with these various concerns in the hope of securing an advantageous route to this timber, so that the same might be placed upon the market.

The Defendant in Error purchased this timber for manufacturing. Its officers, agents and stockholders had been engaged in the manufacture of lumber and its by-products for many years.

The Plaintiff in Error alleges in his complaint that during August, 1917, he being familiar with the timber, knowing its condition, the contour of the country and the possibilities of development, this Defendant in Error did employ the Plaintiff in Error to assist and aid in developing and marketing said property and employed him to devise ways and means of securing the best possible returns from said property, and that in consideration of said services the Defendant agreed to pay his expenses and for his services, and that thereafter this Plaintiff did work for the Defendant in Error for a period of

approximately three and one-half years. That he interviewed the St. Helens Timber Company and C. R. McCormick & Co. and after negotiating with them, at the request and direction of the Defendant in Error, he secured from C. R. McCormick & Co. an option on its logging railroad, equipment, roadbed, rights of way and terminal facilities in St. Helens, which option was effective for a period of six months; and Plaintiff in Error alleges that he made a trip to San Francisco and that he made other trips to St. Helens, Oregon, and it is further alleged that the said Plaintiff in Error interviewed Coleman R. Wheeler, who was the owner of the logging railroad near the south end of this property in Tillamook County, in the hope of securing transportation facilities over the line of Coleman R. Wheeler for the timber situated on the property owned by the Defendant in Error; and Plaintiff in Error alleges that he interviewed and negotiated with the Fir Production Department of the U. S. War Industry Board, in the hope of securing aid from this Department in securing transportation facilities; and it is alleged that the Plaintiff in Error made a number of trips to Cochran, Oregon, at his own expense in his efforts to secure an outlet for this timber; and a like allegation is enumerated in the complaint regarding the negotiations with the Portland & Southwestern Railway Company, which company owned a railroad in Columbia County, the terminus of which was located at Scappoose, Oregon, and after various negotiations, the Plaintiff in Error

secured a proposal from the said Portland & Southwestern Railway Company for the sale of a one-half interest in the railroad, equipment and rights of way, based upon a total valuation of $280,000.00; and a like allegation is enumerated in the complaint regarding negotiations with the United Railway Company, which company operated a railroad out of Linnton, Oregon, in the direction of this property, and through the efforts of this Plaintiff in Error, as he alleges, a lease was finally secured of this railroad for a period of ninety-nine years at an annual rental of $45,000.00, and this United Railway was afterward extended into this timber; and Plaintiff in Error further alleges that he interviewed Mitsui & Company, Norman R. Smith, F. W. Reimers, E. P. Denkman, E. S. Collins and many other lumbermen of the East and West who might be interested in said property. Some of the negotiations undertaken by the Plaintiff in Error were for the sale of a portion of said property; others of the negotiations looked toward the sale of a portion of the capital stock of the Defendant in Error.

It is further alleged and it is a fact that all these negotiations were carried on by the Plaintiff in Error at the special instance and request of the Defendant in Error. Plaintiff in Error was a special agent. He had no authority to consummate any of these transactions. His authority was limited to securing proposals, making investigations and reporting to the officers of the Defendant in Error. This he did for a period of approximately three

and a half years. The evidence discloses that a small portion of this tract of timber was sold to the Inman-Poulsen Lumber Company, and that eventually the entire stock of the Defendant in Error was transferred to the Central Coal & Coke Co. of Kansas City, Missouri.

For these services, extending over a period of several years, and expenses, this Plaintiff seeks to recover.

The Articles of Incorporation which were introduced in evidence provide "That the duties of the General Manager shall be to look after and superintend all the affairs of the company, subject to such regulations as may be imposed by the Board of Directors, to employ all assistance and labor necessary therefor, contract for the compensation of all employees and discharge any person so employed."

Chas. T. Early, with whom the contract of employment was made, testified in answer to the question as to what his position was, as follows: "I always understood I was General Manager."

The Articles of Incorporation, as introduced in evidence, show that Chas. T. Early was a stockholder and an incorporator of the company, and that he was the holder of five hundred shares of $100.00 each, of the capital stock of the company.

The evidence also shows that David C. Eccles was the President of the Defendant in Error company and that he held practically all of the stock of the

corporation, as trustee, holding 31,000 of 35,000 shares.

The statutory power of attorney required by the corporation laws of the State of Oregon was introduced in evidence and discloses that Chas. T. Early was the statutory agent for the State of Oregon.

In the Defendant in Error's Declaration of Intention to do business, Chas. T. Early is designated as a Director, Vice President and Attorney in Fact for the corporation. David C. Eccles is designated as a Director and President. These designations of the authority of Charles T. Early and David C. Eccles were all made in the regular course of business, in compliance with the laws of the State of Oregon, and all were filed prior to the date of the contract between the Plaintiff in Error and the Defendant in Error.

The State or Oregon Corporation Department also requires an annual statement to be filed with the Corporation Commissioner. These annual statements were introduced in evidence and disclose that Charles T. Early was designated in various capacities, as Vice President for the year 1917; the year 1918 as Attorney in Fact and Managing Agent; the year 1919 as Attorney in Fact and Managing Agent; 1920, Attorney in Fact and Managing Agent; 1921, Attorney in Fact and Managing Agent.

Chas. T. Early was placed on the witness stand and testified as follows:

A. Well, immediately after the property was purchased, we sought the best methods of developing

the property. The property was bought for development and not for holding or for speculation. It had no transportation and I think about the first thing that was done was to arrange with Mr. Bates to look up the McCormick property and the Portland & Southwestern Railroad.

Q. Who made those arrangements with Mr. Bates, did you or who was it?

A. I did.

* * * * *

Q. Were you in conference with the officers prior to that time?

A. Yes, sir.

Q. What ones?

A. Well, particularly the President of the company, Mr. David C. Eccles.

Q. How often would you be in contact with Mr. Eccles?

A. Oh, he would come out and sometimes would stay for a day or two, sometimes he would stay for a week.

Q. Was all the timber holdings and property of that corporation in this state?

A. Yes, sir.

Q. As far as you know, did any other officers of this corporation or director live in the state besides yourself?

A. No, sir.

Q. Who handled here the business of this company in the handling and operation of the property?

A. I did.

Q. I wish you would state—the Court has said that what it wants to know and what the jury wants to know, is what you did, Mr. Early, in your capacity in reference to the Oregon-American Lumber Company. Can't you tell just exactly what you did?

A. Yes, there wasn't a great deal done just at that time. I looked after the taxes, hired a tax agent and hired cruisers when it was necessary to hire them, and arranged for fire patrol.

Q. In hiring people here, state whether or not you did that yourself here on your own authority for this company?

A. I did all that I have stated, yes, sir.

* * * * *

Q. And any employment you had there for the Oregon-American Company, who made that employment or request for the attorneys?

A. Well, whatever business that came up that we had to consult an attorney, we took it there. I arranged with them as to fee.

Q. For the Oregon-American Lumber Company?

A. Yes, sir.

Q. State whether or not those were paid by the Oregon-American Lumber Company.

A. They undoubtedly were.

Q. Was any objection ever raised as far as that was concerned, to your handling that matter, employing attorney to look after their affairs?

A. Not to my knowledge.

Q. Now, the question of any office help, or other

things of that kind in handling their office here, who employed that help?

A. Well, I talked it over with the cashier, but he usually hired the help.

Q. But under whose general direction and supervision?

A. Well, under my supervision. If it was necessary to put on another man, or woman, why, we discussed it and he was authorized to do it.

Q. Now, how many meetings did you attend, would you say, at Salt Lake or Ogden—where were those meetings held?

A. Ogden.

Q. How many stockholders' or directors' meetings did you attend?

A. I think about four.

Q. All of them at Ogden?

A. All at Ogden, yes.

Q. Who were present at those meetings?

A. Well, I don't know as I could name everybody that was present.

Q. Well, do as well as you can.

A. There was Mr. Devine.

Q. That is the gentleman sitting here?

A. Yes, sir. Mr. Browning, Mr. Royal Eccles, J. M. Eccles, Marrian Eccles, Jos. Scocroft and I think Mr. Wattles.

* * * * *

Q. The idea being at that time not to dispose of your property, but to develop to operate?

A. Yes, sir.

Q. And in the complaint in this case, which has been spoken of here, I believe you spoke of the McCormick matter, which you have talked with Mr. Bates about. Did you ever discuss that particular matter or phase with Mr. Eccles or the directors?

A. I discussed it with Mr. Eccles. In fact, we were down there together with Mr. Eccles; made one or two trips.

Q. Then on this, which is known as the first item here, the McCormick and St. Helens matter, I understand you and Mr. Eccles, president of the company, and Mr. Bates went out on it?

A. Yes, sir.

Q. Do you know what was said to Mr. Eccles as the president of this company as to what was being done, or what Bates was doing? or the relation between you and Bates?

A. Well, Mr. Bates was instructed to get an option on the McCormick—

* * * * *

This evidence discloses that the President, Mr. David C. Eccles, who held 31,000 of the 35,000 shares of stock in his own name, as trustee, who was also President and Director of the company, knew all about the hiring and knew what Plaintiff in Error was doing, and, in fact, instructed Mr. Bates to carry on some of these negotiations.

Mr. Early also testified that Mr. David C. Eccles, the President, and Mr. Bates himself made a trip over the Coleman R. Wheeler property, and in gen-

eral Mr. Early testified that David C. Eccles was fully informed as to what Plaintiff in Error was doing and that he was working on these various matters. That he made no objection to it. Mr. Early also testified that David C. Eccles, the President, instructed Mr. Bates at certain times to perform certain services, being some of the same services set forth in the complaint. Thus, the evidence discloses that the Vice President and the President hired, authorized and directed Mr. Bates to perform these services and they agreed to pay him. Not only this, but the evidence discloses that the Defendant in Error profited by Mr. Bates' services, ratified his acts in consummating certain of the negotiations which Mr. Bates originated and secured for them, and for which Mr. Bates seeks remuneration.

It is also in evidence that Mr. Early communicated with the various officers, agents and directors of the Defendant in Error company at Ogden, Utah, the home office of the Defendant in Error, and that these officers at various times authorized and instructed Mr. Early to proceed with matters which Mr. Bates had formulated and investigated.

Mr. Early also testified that no objection was ever made to the employment of Mr. Bates.

At the close of Mr. Early's evidence a motion was made to strike from the record all of his evidence. This motion was allowed and an exception was granted. An offer of proof was then made, which offer was rejected and a verdict was directed

by the Court in favor of the Defendant in Error.

The Plaintiff in Error makes two contentions:

First: That the evidence here discloses that Chas. T. Early and David C. Eccles being the Managing Officers of the Defendant in Error corporation, both being directors and stockholders of the company, and being the only active members of the company, had authority to hire Mr. Bates to assist in developing this property. His employment was that of a special agent.

Second: The contention of the Plaintiff in Error is that the defendant company, for a period of three and a half years, took advantage of the Plaintiff in Error's services, ratified his acts, took the fruits of his labor and is now estopped to claim that he was not hired by its Board of Directors.

The Answer pleads the want of authority to hire Plaintiff in Error, and the Reply sets up an estoppel and ratification of Plaintiff in Error's labor.

POINTS AND AUTHORITIES.

Chas. T. Early and David C. Eccles, being the managing agents, directors, stockholders and incorporators of Defendant in Error, had authority to employ Mr. Bates, particularly when his employment was acquiesced in, acted upon and ratified by the Defendant in Error.

Fletcher's Cyclopedia of Corporations, Vol. III, pages 3278, 3281, 3285.

Sun Printing Co. vs. Moore, 183 U. S. 642-651.

Russell vs. Washington Savings Bank, District of Columbia Appeal Case, Vol. 23, pages 398-407.

Chilcott vs. Washington State Colonization Co., 45 Wash. 148-152; s. c. 88 Pac. 113.

Kitzmiller vs. Pacific Coast & N. Packing Co., 90 Wash. 357-363; s. c. 156 Pac. 17.

Aerne vs. Gostlow, 60 Ore. 113-121; s. c. 118 Pac. 277.

Rae vs. Heilig Theatre Co., 94 Ore. 408-412; s. c. 185 Pac. 909.

West vs. Washington Railway Co., 49 Ore. 436-445; s. c. 90 Pac. 666.

Pettibone vs. Lake View Town Co., 134 Calif. 227-228.

Atlantic & Pacific Rld. Co. vs. Reisner, 18 Kans. 458-460.

Oakes vs. C. W. Co., 143 N. Y. 430.

The Defendant in Error company, having taken the fruits of the Plaintiff in Error's labor and having consummated contracts entered into by Mr. Bates, it is now estopped from claiming that the Plaintiff was not hired by the proper officers.

Rae vs. Heilig Theatre Co., 94 Ore. 408-412; s. c. 185 Pac. 909.

David C. Eccles, the President of the company, knew that Mr. Bates was rendering services for the company. He was so informed by Mr. Early.

Notice to an officer or agent of a corporation in the course of his employment concerning the affairs of the corporation is notice to the corporation, re-

gardless of whether the officer imparts the knowledge to the corporation or not.

Saratoga Investment Co. vs. Kern, 76 Ore. 243.

Weber vs. Richardson, 76 Ore. 286.

If there is any evidence tending to prove the issues made by the complaint the case is one for a jury.

Empire State Cattle Co. vs. Atchison Ry. Co., 210 U. S. 1-10.

Dernberger vs. Baltimore & O. R. Co., 243 Fed. 21-23.

The question of whether Early and Eccles had authority to employ Bates is a question of fact and should have been submitted to the jury.

Bagot vs. Intermountain Milling Co., 100 Ore. 127-132.

Rae vs. Heilig Theatre Co., 94 Ore. 408-412; s. c. 185 Pac. 909.

ARGUMENT.

It is sometimes said that a corporation acts through its Board of Directors, but it is probably more correct to say that a corporation acts through its officers and agents. It is also often stated that a person deals with an agent at his peril, but this rule is also subject to the qualification that when a person deals with an officer of a corporation, or a managing agent, then the rule is somewhat different; the presumption being that an officer and a managing agent has authoritly to act for the corporation and bind it

with his contracts, whereas with the ordinary subordinate agent or salesman this is not the rule.

Here we have a state of facts where the president and managing agent, who was the vice president of the company, engaged the Plaintiff in Error to perform these services. Both of these officers were stockholders, the president holding practically all of the stock of the corporation, as trustee. They were the only active officers of the corporation, none of the other officers or directors living in the State of Oregon, where all of the assets and the property of the Defendant in Error is located.

Mr. Early testified that he had always managed the business of this corporation in this State; that the President, David C. Eccles, came to Portland quite often and during such times he was fully acquainted with all the facts pertaining to the employment of the Plaintiff in Error.

The evidence discloses that this timber, comprising 27,000 acres, was purchased for manufacture and not for speculation or holding. The company, a Utah corporation, desired to secure transportation facilities for this property, for without transportation facilities the property could never be developed, and all of the services performed by the Plaintiff in Error in this action looked toward the development of this property in the first instance. It is true that later on a desire to sell the property, or part of it, or part of the capital stock of the corporation, was manifested, and the Plaintiff in Error was employed to assist in securing purchasers for the prop-

erty, but in the first instance the services which Mr. Bates performed and for which he was hired were the ordinary usual services which a corporation, such as the Defendant in Error, would require, considering the purposes for which the timber was purchased. The services that Mr. Bates was employed to perform, and which we allege he did perform, were no more unusual or uncommon than the services of a cruiser of timber or a tax agent, or the ordinary superintendent or foreman in a logging camp. Mr. Bates was employed primarily to interview people and corporations, with a view to ascertaining whether transportation facilities could be secured. He had no authority to enter into binding contracts with other corporations. He was not employed in such a capacity, but he was ordered, requested and directed by the managing agent, vice president and president to interview people, secure options and report to them, and this is what he did for a period of many months during the primary stages of his employment. It is alleged in the complaint that he secured an option from the C. R. McCormick people; that he also secured a proposal from the Portland & Southwestern Railway Company, and that finally through his efforts, as we allege, he was instrumental in the Defendant in Error company securing a lease on the United Railway for a period of ninety-nine years, at an annual rental of $45,000.00. His services were no more unusual or uncommon than the employment of an attorney to go out and secure a right-of-way from a farmer or

other owner, or for an attorney to interview operating concerns, with a view of securing traffic arrangements or transportation facilities.

Now, all these services Plaintiff in Error contends were peculiarly within the purposes for which the Defendant in Error corporation was organized. Without these transportation facilities and without an outlet for its timber the manufacture thereof was impossible. It is true that the Defendant company refused to consummate the options secured from the C. R. McCormick Company or the Portland & Southwestern Railway Company, because it did not consider it advisable to do so, but the Defendant company did eventually take a lease of the United Railway, going to show that the services performed by Mr. Bates, and for which he was hired, were all within the purposes for which this Defendant in Error was incorporated.

The contract of employment of Mr. Bates was not for any stated period of time. The Defendant in Error was at liberty to terminate it at any time, and the Plaintiff in Error was at liberty to cease his labors without even the formality of giving notice. Thus, the contract cannot be said to be an unusual or an uncommon one. Plaintiff in Error was merely employed to assist the Defendant in Error in developing this timber, for the reason that the officers of the Defendant in Error realized that the Plaintiff in Error was familiar with this property, knew its condition, its possibilities, was acquainted with all

the adjoining operators and could render them valuable services.

In Fletcher's Cyclopedia of Corporations, Vol. III, the authority of officers of a company is exhaustively treated, and it is said, Section 1906:

> "As stated by Justice Marshall of Wisconsin, 'Technically speaking, a corporation cannot act contractually, except by its board of directors, or their authority; but that has so many exceptions as to be of little use in practical affairs. A corporation may be bound by its custom of doing business. It may be bound by acquiescence; it may be bound by accepting and retaining the fruits of a transaction and in other ways without any action of its board of directors.' The rule has also been well stated as follows: The duties of officers 'may be prescribed or limited by the charter of the incorporation or by by-laws and regulations of the body corporate; but in the absence of specific limitations brought home to the knowledge of those who deal with them, or of which those who deal with them are bound to take notice, the officers of a corporation as its agents, are authorized to bind the corporation so long as they act within the ordinary scope of their duties. While the board of directors or trustees, or by whatever name it may be called, is the usual governing body of all private corporations and entitled to direct and control all its business, great or small, and to give direction to its other officers, yet the president and other officers, and not the board of directors, are those who are usualy brought into contact with third parties

in the conduct of the business of the organization; and custom and usage, and the necessities of the social order, demand that these executive officers should be regarded as entitled to bind the organization in all matters which such organizations are accustomed to transact through such officers. This is elementary law in regard to corporations.' "

And again, Section 2100 of this same authority, reads as follows:

"A provision in the charter that 'the affairs of this corporation shall be managed and conducted by a board of directors,' is common to all charters, and in no manner restricts or limits the implied power of the general manager to bind the corporation by any contract entered into by him for the company in the usual scope of his authority."

And in Section 3202, it is said by this authority:

"Furthermore, the mere fact that a contract is unusual in its terms and without precedent so far as the particular corporation is concerned, does not necessarily preclude the authority of the manager to enter into it."

And this same authority in this same section lays down the rule:

"If the general manager enters into a contract it will be presumed that he has authority to attend to and accept the manner of its performance in behalf of the corporation."

Section 2102 lays down the rule:

"The general manager may make contracts which are in the ordinary course of the busi-

ness, especially where he had executed similar contracts before without objection."

It is not contended in this case that this property was to be held for speculation. The evidence discloses that it was purchased for the purpose of development and manufacture. This contract with Mr. Bates was primarily for the purpose of developing this property. All of the services rendered by Mr. Bates in the initial stages of his employment were directed toward the development of the property. It was only later that the question of the sale of a portion of the property came up for consideration, and during the later years of Mr. Bates' employment, instructions and orders came not only from Mr. Early and David C. Eccles, but also from other officers of the company at Ogden, Utah; and Mr. Early testified that he reported to the various officers and directors of the company at Ogden, Utah, during the later years of Mr. Bates' employment, and it is in evidence that during the negotiations for the sale of certain of this property, for which services Mr. Bates is seeking to recover, the negotiations were fully reported to the company's headquarters at Ogden, Utah, and considered by other members and officers of the company, all of whom were fully apprised as to the work which was being done by Mr. Bates.

Mr. Fletcher lays down the rule in Section 2098, that

"The test seems to be whether the act is within the ordinary business of the corporation.

> If it is, then as already stated, the manager has power." "And this rule," states this author, "applies to all officers of a corporation who have the practical management of and are the active members of the corporation."

Here the evidence discloses that Mr. Early had for many years managed the affairs of the Eccles interests in the State of Oregon. He was the active member of the corporation. He looked after the interests and the property of the corporation. The President, David C. Eccles, came to Portland on numerous occasions and consulted with him, and Mr. Early testified that the President was advised as to Mr. Bates' employment and what Mr. Bates was doing. Furthermore, the evidence discloses that the President instructed Mr. Bates on a number of occasions and accompanied Mr. Bates during the time that he performed some of the services.

It is said in Fletcher's Cyclopedia, Section 2098:

> "As a general rule, in the absence of express restrictions on his powers, with actual or constructive notice thereof to persons dealing with him, an officer or agent of a corporation, intrusted with the general management and control of its business, has implied authority to make any contract or do any other act which is necessary or appropriate in the ordinary business of the corporation." "The terms 'general manager' are words of large meaning. By giving such a title to its officers the corporation holds him out to the world as its managing agent, its alter ego, as the person having gen-

> eral and supreme authority as the immediate representative of the directors in the conduct of the corporate affairs and in its dealings with the public. To allow a corporation to confer such a title upon one of its officers and thus hold him out to the world as possessing the large responsibilities and powers which are implied from his title, and then permit it to repudiate engagements into which he has entered within the scope of such implied powers, would be to sanction the perpetuation of a fraud; and this the courts will never do except under the stress of the most mandatory requirements of the law."

Again, it is said by this same authority in this same section:

> "A 'general manager' without any limitations or restrictions as to his express authority has implied powers, it has been said, to do anything that the corporation could lawfully do in the general scope of its business."

Industrial and economical conditions are such that large corporations, some of them operating in every state of the Union with their home offices and their board of directors in a far-away city, must of necessity act through and by agents, and the general public ought not to be held to too strict a rule in dealing with agents who have been held out as the active members of the corporation.

Here we have a state of facts where Mr. Early had been in the employ of the Eccles interests, who were the owners of practically all the stock of the Defendant in Error corporation, for a period of

thirty years and over. A large portion of this time he had looked after their lumbering and logging interests in the State of Oregon. He had during that time entered into many contracts, assumed and discharged many obligations. He testified that no objection had ever been made to any of his acts.

In addition to this, we have the President of the company, who is the holder, as trustee, of practically all of the stock of the corporation, also acquiescing in the contract, and directing Mr. Bates in the performance of his labors. These two officers, stockholders and managing agents, as the evidence discloses, were the active and the only active officers of the corporation. Its property was all located in the State of Oregon. All that was necessary to be done in the handling of this property was done by these two officers. The company, it is reasonable to assume, directed them to handle this property and to look after it. It had been customary for them to do so in the past and there was no reason to believe that any different rule was followed in this particular case. The presumption, thus, is that these two parties, occupying the highest offices in the corporation, both of whom were members of the board of directors, had the authority to make the contract alleged by the Plaintiff in Error. There is no evidence in the case that Chas. T. Early or David C. Eccles did not have this authority, the presumption being that they did have this authority, and there being no notice to Plaintiff in Error, either active or constructive, of a lack of authority. Certainly it

was within the ordinary scope of the corporation's business to engage the Plaintiff in Error in this work. The contract with him could be terminated at any time, but having worked for this corporation for a period of three and a half years, much of his labor having been appropriated by the Defendant in Error, can it now be contended that this Defendant in Error is in a position to claim that its officers did not have the authority to enter into the said contract?

Section 2106, Fletcher, lays down the doctrine in regard to the employment of a broker, and enunciates the rule as follows:

> "Authority to sell corporate property includes power to employ a broker to effect such sale, where that is the ordinary means of accomplishing a sale. So he may agree to pay a broker commissions to do an act within the authority of the general manager. He may employ a real estate broker, at the prevailing rate of commissions, to sell land unnecessary for the use of the corporation and which it was compelled to buy in at a foreclosure sale. The general manager of a fish company may employ brokers to sell fish, in advance of the opening market price for the season, where at about the then current price. The general manager of a land company may employ a person to sell lands on a salary and commission, or may agree to pay a certain sum per acre for all lands purchased by the corporation through negotiations initiated by the other party to the contract."

It will be noticed from the testimony that the company authorized Mr. Early to sell this property, not at the initial stage of the employment of Plaintiff in Error, but later on. Mr. Early testified that he was in constant communication with Ogden by telephone, wire and by letter, and it is to be borne in mind that when Mr. Bates was employed he was not employed for the purpose of selling real estate. His employment was of a general nature and character. He was employed to assist the Defendant in Error company in developing and handling its property. He was subject to the orders of the officers and agents of the Defendant in Error company at all times, and his time and services were at the disposal of the Defendant, as he has alleged in the complaint.

A case often cited by the authorities is that of Sun Printing Company vs. Moore, 183 U. S. 642. Mr. Justice White rendered an exhaustive opinion. On page 651 the following rule is enunciated by the Supreme Court of the United States:

> "It is well settled that the president or other general officer of a corporation has power *prima facie* to do any act which the directors or trustees of the corporation could authorize or ratify. The burden was on the Sun Association to establish that Lord did not possess the authority he assumed to exercise in executing the contracts."

So, in this case, the President and the Manager of the company both, according to the evidence, employed the Plaintiff in Error. This would seem to

us to have made out a *prima facie* case and it was for the Defendant in Error to show want of authority in these officers to enter into this contract.

The rule, obviously, is different in the case of a contract with the ordinary subordinate agent of a corporation, and a contract with a vice president, manager, stockholder, director and president of a company, who have the active management of the corporation and who perform all the acts which the corporation performs. In such a case, when the evidence discloses that the contract was made with such an officer or officers, it becomes a matter of defense for the Defendant to show want of authority, the presumption being that such officers have the requisite authority to enter into the said contract.

There is in this contract no evidence to show that the Board of Directors did not authorize the employment of Mr. Bates. The evidence is silent as to what action the Board of Directors took in the matter, and certainly, when the record is in such a state, it is sufficient to take the case to the jury in the absence of other evidence rebutting it.

And, again, on page 652 of this same case, the Supreme Court of the United States says:

> "If the corporation could have done these things, the agent having the broad powers possessed by Lord had a similar right."

Lord, it will be noticed in this case, was the managing editor of the newspaper.

We submit that this Supreme Court decision sustains the contention of the Plaintiff in Error.

Again, in a recent case decided by the District Court of Columbia, Russell vs. Washington Savings Bank, Vol. 23, Appeal Cases, pages 398-407, in which the learned Justice makes the following observations:

> "But while we fully concur with the learned justice who presided in the court below at the trial of this cause in most of his ruling, we find ourselves unable to concur in the view that there was no sufficient testimony to go to the jury on the question of the agency of George C. Ferguson, and his authority to bind the defendant bank in the transaction with the plaintiffs. Agency in such cases is usually proved by circumstances and by the apparent relations and conduct of the parties. A corporation can only act by agents, and its duly elected officers are within the scope of their respective duties, its agents to deal with third parties. Their duties may be prescribed or limited by the charter of the incorporation or by by-laws and regulations of the body corporate; but in the absence of specific limitations brought home to the knowledge of those who deal with them, or of which those who deal with them are bound to take notice, the officers of a corporation, as its agents, are authorized to bind the corporation to third parties so long as they act within the ordinary scope of their duties. While the board of directors or trustees, or by whatever name it may be called, is the usual governing body of all private corporations and entitled to direct and control all

its business, great or small, and to give direction to its other officers, yet the president and the other officers, and not the board of directors, are those who are usually brought into contact with third parties in the conduct of the business of the organization; and custom and usage, and the necessities of the social order, demand that these executive officers should be regarded as entitled to bind the organization in all matters which such organizations are accustomed to transact through such officers."

"Now, that the president of a bank is its chief representative and entitled to act as its general agent in the transaction of its business cannot be questioned. That among the things which he can undoubtedly bind his bank is the employment of counsel to appear for it and defend its interests in pending or prospective litigation, is a proposition which seems to receive the unqualified approval of counsel on both sides of this case."

Now, it is to be remembered that the Defendant in Error company purchased this timber for the purpose of manufacturing it into lumber. The thing that the President and the Managing Agent and Vice President were called upon to do was to carry out this purpose. In carrying out this purpose they had a right to employ the Plaintiff in Error to assist in doing it. That was the object of the company. It was the ordinary purpose for which it was formed. In the later stages of the Plaintiff in Error's employment, it was desirous of selling a portion of the company's property or a portion of its stock, and

eventually all of it was sold, but it is to be remembered that when the time for the sale of the property came up the other officers and the Board of Directors were fully advised as to what was being done. In fact, the Defendant in Error acted upon and consummated a number of the contracts that the Plaintiff in Error was instrumental in securing. The Board of Directors and the company consummated the contract for the lease of the United Railway Company. The Board of Directors and the company consummated the sale of the property to the Central Coal & Coke Co. It is in evidence here that in many of the other transactions for the sale of property, such as to the Inman-Poulsen Lumber Company and the Kerry Timber Company, the other officers, agents and directors of the Defendant in Error company were fully apprised and acted, giving directions, and in the Inman-Poulsen Lumber Co. contract which was originated by the Plaintiff in Error, the company acted upon it, consummated it and Mr. Bates, the Plaintiff in Error, secured his pay upon that particular transaction. Not from the Defendant in Error, it is true, but from the purchaser, but the manner of the payment was merely a matter of detail.

Again, in the case of Chilcott vs. Washington State Colonization Company, 45 Wash. 148-152; s. c. 88 Pac. 113, the Supreme Court of Washington uses the following language:

> "The appellant further contends that error was committed in permitting the respondent

Grabowski to testify that Harding had admitted to him that he, Harding, and Chilcott had agreed on twenty-five cents per acre as compensation for the respondents. It is conceded that Harding was at different times trustee, treasurer, and manager of the corporation. This being true, he was not an agent of restricted authority, but one exercising broad and general powers. A corporation acts only through its officers, managers, and agents, and it is a well-established rule of evidence that it is bound by the admissions of its agents or managers while engaged in the discharge of their duties. The evidence here shows that the respondents were endeavoring to secure an agreement as to the amount of their compensation. They both conferred with Harding for that purpose. By their testimony they claim that Harding first agreed with Chilcott, and immediately, or shortly thereafter, restated such agreement to Grabowski; who expressed satisfaction therewith. If Harding, as general manager, was not entitled to make contracts for the appellant, fixing compensation to be paid, it would be difficult to understand who could do so. His act was that of the corporation, and his statements made to Grabowski under these circumstances were sufficiently a part of the *res gestae* to render them admissible as against the appellant. Elliott, Evidence, p. 252."

In the case of Kitzmiller vs. Pacific Coast & N. Packing Co., 90 Wash. 357-363; s. c. 156 Pac. 17, this same Court used the following langauge:

"That Kildall had no express or implied authority to enter into the transaction complained

> of cannot be sustained upon reason or authority. As 'general manager' without any limitations or restrictions as to his express authority, he had implied authority to do anything that the corporation could lawfully do in the general scope of its business. Harvey vs. Sparks Brothers, 45 Wash. 578, 88 Pac. 1108; Saunders vs United States Marble Co., 25 Wash. 475, 65 Pac. 782; Chilcott vs. Washington State Colonization Co., 45 Wash. 148, 88 Pac. 113; Citizens' Nat. Bank of Tacoma vs. Wintler, 14 Wash. 558, 45 Pac. 38, 53 Am. St. 890; Waldron vs. Canadian Pac. R. Co., 22 Wash. 253, 60 Pac. 653. It assuredly was as much the corporate business of the company to sell as to catch and pack its products."

The evidence discloses that long before any of the sales of any of the property set forth in the complaint herein, and long before what is known as the Inman-Poulsen, Kerry and Central Coal & Coke deals were initiated, Mr. Early attended meetings of the Board at Ogden, Utah.

The Plaintiff in Error, who seeks to recover for services rendered in the Kerry deal and the Central Coal & Coke deal, had received instructions from Mr. Early regarding these deals, after Mr. Early had attended the meetings of the Board of Directors. Not only this, but the evidence discloses that Mr. Early had been reporting to the people at Ogden quite regularly and this was particularly so during the final stages of Mr. Bates' employment.

The question was asked Mr. Early:

"In reporting as you did to J. M. Eccles the result of that transaction" (referring to the Inman-

Poulsen transaction) "you were making a report then to the representatives at Ogden of the transactions that had been carried on in the sale of a portion of their timber holdings to the Inman-Poulsen Lumber Company, were you not?"

A. Yes, I was completing a report; it was a daily report made by telephone or telegraph."

Also, Mr. Early testified in answer to a question from Defendant in Error's counsel:

"You instructed me to go to San Francisco and see what I could do and then to exhaust every resource to dispose of this property—that you had to do something, you had to have money."

It is true that in the initial stages of Plaintiff in Error's emloyment, Mr. Early testified that he did not report to anyone except the President, but it is also to be borne in mind that Mr. Early and Mr. Eccles were the active officers of the Defendant in Error corporation; that Mr Eccles lived in Ogden, the home office of the corporation, the place where its Board of Directors sat and acted, if they did act at all. There is no evidence here contrary to what might reasonably be supposed to happen that the President reported to his company and kept it fully advised. Certainly, the knowledge to the President ought to be considered the knowledge of the company. The Board of Directors, in many corporations, seldom meet and it would seem to be too harsh a rule that before a corporation can be bound by a knowledge of its affairs, such knowledge must come to its Board of Directors.

Mr. Early also testified that he reported by telephone and telegraph to the home office at Ogden, from one to three times a day.

The evidence discloses that this timber was originally intended to be bought for the Oregon Lumber Company, but a new corporation was formed to take it over. It is also in evidence that the Oregon Lumber Company and the Oregon-American Lumber Company, the Defendant in Error, are affiliated companies, their officers and stockholders interlocking.

And Mr. Early testified in regard to his relations with these companies and stockholders, that during the thirty-three years of his employment for these interests, none of his transactions had ever been questioned or repudiated. During much of this time he occupied the highest executive positions in the company. After Mr. Early's resignation, Royal Eccles, who is an attorney and was the Secretary of the Defendant in Error as well as the Oregon Lumber Company, from both of which companies Mr. Early resigned, sent to Mr. Early a resolution of the Board of Directors commending Mr. Early for his faithful services as Vice President and General Manager of the company covering thirty-three years of continuous service. This resolution purports to be acquiesced in by the stockholders as well as the directors.

In the letter of Royal Eccles, who was Secretary of both companies, Mr. Eccles calls attention to the

fact that Mr. Early had attained "many of the most important executive responsibilities in the management of the company."

The fact remains that Mr. Early had always managed the affairs of the Defendant in Error and its affiliated companies in the State of Oregon for many past years. The company had turned over to Mr. Early the management of the Defendant in Error and its interests. He was a general officer and a general agent. No limitations are presumed in the case of such an agent. The Plaintiff in Error, spending three and a half years of his time working for this company and its interests, dealing with Mr. Early, whom he believed certainly had authority to employ him, should not now be denied to have his case submitted to the jury, particularly after the Defendant in Error has received the fruits of his labor.

In the case of Aerne vs. Gostlow, 60 Ore. 113-121, the Supreme Court lays down the rule:

> "Persons dealing with a known agent have a right to assume, in the absence of information to the contrary, that his agency is general."

Again, in the case of Rae vs. Heilig Theatre Co., 94 Ore. 408-412, the Supreme Court of the State of Oregon lays down the rule that whether or not an agent is authorized to make an employment is a question of fact for the jury, and uses the following language:

> "With the conflict in the testimony we have nothing to do. The statement of the president

of the company could fairly be construed by the jury as indicating that the services of the plaintiff were accepted and acted upon by the corporation. The testimony of the president also signified that James C. Heilig was authorized to act for the company in the matters of its accounts. Therefore the evidence of the authority of the agent of the company does not rest alone upon the declaration of such agent.

"Corporations can only act through their officers and agents. The power of such representatives of a corporation to bind the corporation is governed by the general law of agency, the underlying principles being the same. Their authority may be implied from their conduct and the acquiescence of the directors: 7 R. C. L. 620, p. 616. If, as the testimony purported, James C. Heilig was the agent of the defendant, and as such employed the plaintiff as a public accountant to perform services for the defendant which the corporation approved, and accepted the benefits of, then it cannot avoid that part of the arrangements made by the agent imposing a responsibility connected therewith upon the defendant. As said by Mr. Commissioner King, in McLeod vs. Despain, 49 Ore. 536, at page 563 (92 Pac. 1088, at page 1091, 124 Am. St. Rep. 1066, 19 L. R. A. (N. S.) 276):

" 'It is too well settled to admit of serious discussion that the principal must adopt or reject the act of his agent as an entirety, and cannot receive the benefit of such agency without bearing its burdens,' citing: Coleman vs.

Stark, 1 Ore. 116; La Grande Nat. Bank vs. Blum, 27 Ore. 215 (41 Pac. 659).

"Persons dealing with a known agent have a right to assume, in the absence of information to the contrary, that his agency is general: Aerne vs. Gostlow, 60Ore. 113 (118 Pac. 277). The testimony indicated that James C. Heilig customarily incurred and liquidated expenses for the company in matters pertaining to its affairs. It is well settled that when, in the usual course of the business of a corporation, an officer or agent has been allowed to manage certain of its affairs, his authority to represent the corporation may be implied from the manner in which he has been permitted by the directors to transact its business. The usual employment is evidence of the powers of an agent, and the principal is bound by the acts of his agent within the apparent authority conferred upon such agent: Martin vs. Webb, 110 U. S. 7 (28 L. Ed. 49, 3 Sup. Ct. Rep. 428; see, also, Rose's U. S. Notes). The primary object of a corporation in employing an agent is that he shall be enabled to accomplish the purposes of the agency, and other persons are invited to deal with the agent with that understanding: 7 R. C. L. 623, par. 620."

The jury might well have reached the conclusion that Chas. T. Early and the President, David C. Eccles, had authority to employ the Plaintiff in Error. Not only this, but the jury might well have found that since the Defendant in Error had received the fruits and benefits of Plaintiff in Error's

labor, that it was obligated to assume the liabilities. The question of implied power and express powers were both for the jury.

In the case of West vs. Washington Railway Co., 49 Ore. 436-445, the Supreme Court lays down the following rule:

> "It is admitted by the pleadings that the defendant, at the time of the agreement, held title to the premises, subject only to the mortgages thereon; that McCabe at that time was its vice president and general manager; that the written lease was executed by him in that capacity; that he received $100 under the parol agreement, and placed plaintiff in possession of the lots. He also admits that he was its general manager, and, as such, offered to dispose of its realty. No attempt having been made to show that he was acting outside of his duties as such manager, it will be presumed that he was acting within the scope of his agency in the dealings had with plaintiff. When McCabe testified that he was general manager, he thereby gave evidence that he was agent for the company in all its dealings. In effect he became, in his dealings with the public, the corporation itself."

And the Supreme Court in this same case, on page 446, on the question of ratification, says, after stating that the corporation has received the fruits of the agent's efforts:

> "These circumstances, taken together with the conceded fact that the money was paid to him, by him turned over to and retained by the company, are sufficient to manifest at least a

ratification of his acts, and inevitably leads to the conclusion that he had full authority to bind defendant."

In the case of Pettibone vs. Lake View Town Company, 134 Cal. 227-228, the Supreme Court of California uses the following language:

"The contract is in writing, and is set out in full in the findings. It constituted the plaintiff its exclusive agent for the sale of lands in the counties of Riverside, San Bernardino, and Los Angeles, on a salary of seventy-five dollars per month and certain commissions, the term of service to be three months, commencing December 1, 1897, and to continue thereafter until terminated by a sixty-days' notice, in writing, by either party to the other.

"The principal question relates to the execution of the contract by the corporation. It is signed thus: 'Lake View Town Company, by F. E. Brown, President.'

"The court found that no resolution was passed by the directors of said corporation authorizing the execution of said contract; that the matters and things contained therein are all authorized by the articles of incorporation to be done and performed by said corporation, and are matters within the ordinary course of its business" * * * *

"No intimation is given that any objection was made by the board of directors, or by any one, to the contract in question, or to any of the acts of the president in the conduct of the business of the corporation. That the president of this corporation had the power to bind it by the

contract in question is sustained by Crowley vs. Genessee Mining Co., 55 Cal. 273; Streeten vs Robinson, 102 Cal. 542, and Bates vs. Coronado Beach Co., 109 Cal. 162. For numerous cases in other jurisdictions which cite and follow Crowley vs. Genessee Mining Co., 55 Cal. 273, see 3 Notes on California Reports, under that case."

The Supreme Court of Kansas, in the case of Atlantic & Pacific Rld. Co. vs. John C. Reisner, 18 Kans. 458-460, uses the following language:

> "The testimony however, brief as it is, discloses the fact that Hyde was the *general agent* of the company. We cannot ignore this evidence. Upon it rests the liability of the plaintiff in error. The power and authority of the *general agent* of a railroad company is much greater than that of a station agent. In the case of a general agency, the principal holds out the agent to the public as having unlimited authority as to all his business. When the witness testified that Hyde was the general agent of the road at Atchison, he thereby gave evidence that the railroad company held out to the public such person as its agent in all its business and employment. In other word, the general agent of the company is virtually the corporation itself."

We respectfully submit that in view of the long period of time that Plaintiff in Error performed services for the Defendant in Error, a period of three and a half years, during all of which time he was constantly in conference with the active members of the corporation and during a large part of

the time other members of the Defendant in Error corporation were fully advised, together with the further fact that the home office was, during much of this time, fully apprised of what was being done, taken in connection with the further fact that the Defendant in Error acted upon and consummated contracts and agreements which the Plaintiff in Error was instrumental in securing, that the evidence in this case is amply sufficient to warrant this case being submitted to the jury, it being a general rule that if there is any substantial evidence from which a jury may find a fact, it then becomes a question for the jury and not the Court.

Respectfully submitted,

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